



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

092106

B-180015

40231

November 28, 1973

Mr. Benjamin C. Tyner  
Authorized Certifying Officer  
Federal Housing Administration  
Department of Housing and Urban Development

221

Dear Mr. Tyner:

492

Your letter of October 23, 1973 (reference: AFHITIO), concerns a voucher presented to you for certification. The voucher, in favor of the Hialeah Miami Springs First State Bank, Hialeah, Florida, as lender, in the amount of \$1,598,40, covers a loan sustained on the note of Ortland H. and Rebecca B. Bodie which had been insured pursuant to Title I of the National Housing Act, as amended, 12 U.S.C. 1701 et seq.

The borrowers' credit application (Form FH-1) dated May 16, 1969, states that the improved property was owned by the Richland Co., Inc., as title holder. The credit application, the installment note, and the completion certificate were signed individually by Ortland H. and Rebecca B. Bodie. There is no indication on any of these documents that they were signed by Ortland H. and Rebecca B. Bodie as representatives of the Richland Co., Inc.

In view of the fact that the owner of the property was the Richland Co., Inc., which was neither the applicant for credit nor a maker of the promissory note, the lender was advised by FIA that the claim could not be certified for payment. The lender, however, appealed this decision and by letter dated July 31, 1973, it requested that our Office rule on this matter. You now seek our views as to whether it is proper to certify the enclosed voucher for payment.

At the time the loan was made 12 U.S.C. 1703 provided, in pertinent part, as follows:

"(a) The Secretary is authorized and empowered to  
\* \* \* insure banks \* \* \* against losses \* \* \* as a result  
of loans \* \* \* for the purpose of financing alterations,  
repairs, and improvements upon \* \* \* real property \* \* \*  
by the owners thereof or by lessees of such real property  
under a lease expiring not less than six months after the  
maturity of the loan \* \* \*."

[Payment for Loss on FHA Insured Note]

7/6/263

B-180015

This statutory language makes clear that the authority to insure loans is limited to loans made either to the owners of the property or to lessees of real property under a lease expiring not less than 6 months after the maturity of the loan. The responsibility to make certain that the borrower meets these statutory requirements rests upon the insured lending institution. Cf. B-172121, April 12, 1971. Consequently, since the title to the property to be improved is in Richland Co., Inc., the loan made to Ortlund H. and Rebecca B. Bodie was ineligible for insurance under the applicable statutory provision.

Further, although the Secretary of Housing and Urban Development is authorized by section 1703(e) of Title 12, U.S.C., to waive compliance with regulations prescribed by him, neither that section nor any other provision of the act vests any authority in the Secretary to waive compliance with the above-quoted statutory provisions. See B-127167, July 15, 1970; B-164118, November 19, 1969. Therefore, the voucher in question may not be certified for payment and is returned herewith together with your claims file.

Sincerely yours,

Paul G. Dembling

For the Comptroller General  
of the United States